



**THE ATTORNEY GENERAL  
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL**  
ATTORNEY GENERAL

*overrule*  
*V-483*

June 11, 1949

Hon. J. M. Falkner  
Banking Commissioner  
Austin, Texas

Opinion No. V-842.

ATTN: H.L. Bengtson  
Deputy Banking  
Commissioner

Re: Eligibility of the  
State Treasurer to  
act as trustee for  
a corporation issu-  
ing securities under  
Article 1524a (V.C.S.).  
Construction of a  
proposed trust agree-  
ment, and applicabil-  
ity of Article 696  
(V.C.S.).

Dear Sir:

You have requested the reconsideration of  
Opinion No. V-483 by this office. Your original re-  
quest is restated as follows:

"The Sam Houston Underwriters, Inc.,  
of Houston, Texas is a domestic corpora-  
tion having been granted a charter by the  
Secretary of State on July 3, 1947, with  
Sub-Section 49 of Article 1302, Revised  
Civil Statutes of Texas, as its purpose  
clause and, by virtue of said powers, it  
is under the general supervision of this  
Department in accordance with the provi-  
sions of Article 1524a, Revised Civil  
Statutes of Texas.

"Said corporation now proposes to  
issue and sell to the general public a  
fifteen-year Maturity Underwriters Bond  
subject to the provisions of Section 7  
of Article 1524a, Revised Civil Statutes  
of Texas, which provides for collateral-  
ization of all outstanding bonds, notes,  
certificates, debentures and other obli-  
gations sold in Texas by securities of the  
reasonable market value equaling at least  
at all times the face value of such obli-  
gations, which securities shall be placed

in the hands of a corporation having trust powers approved by the Banking Commissioner of Texas, as Trustee, under a trust agreement or at the option of any such corporation which sells in Texas such obligations as heretofore referred to, such corporation may, upon application to and approval by the Banking Commissioner, deposit securities with the State Treasurer of Texas under a trust agreement in lieu of such deposits with a Trustee as set forth hereinabove.

"Subject corporation has submitted for the Commissioner's approval its trust indenture naming the State Treasurer as Trustee, together with a specimen of the bond or obligation which it proposes to sell. We enclose said instruments and, in connection therewith, the following questions are submitted for your opinion:

"1. Are the terms and conditions of the trust indenture such as to warrant the approval thereof by the Banking Commissioner?

"2. Would the State Treasurer, by virtue of his official capacity, be eligible to act as Trustee under the terms of the submitted trust indenture?

"3. Is the proposed bond considered to be in legal form and does it come within the class of instruments or obligations mentioned in Section 7 of Article 1524a, Revised Civil Statutes of Texas? If so, would the provisions of Article 626, Revised Civil Statutes of Texas, also apply?"

You have also requested that if upon reconsideration the bond referred to as being sold by the Sam Houston Underwriters, Inc., is the type of obligation requiring collateralization, we advise as to the amount for which each bond is to be collateralized.

For the purpose of this opinion, questions (1) and (2) are discussed and answered together.

The pertinent provisions of Section 7 of Article 1524a, Vernon's Civil Statutes, are as follows:

"All bonds, notes, certificates, debentures, or other obligations sold in Texas by any corporation affected by a provision of this Act shall be secured by securities of the reasonable market value, equaling at least at all times the face value of such bonds, notes, certificates, debentures or other obligations. If such corporation sells in Texas, bonds, notes, certificates, debentures, or other obligations upon which it receives installment payments, such bonds, notes, certificates, debentures and other obligations shall be secured at all times by securities having the reasonable market value equal to the withdrawal or cancellation value of such obligations outstanding. Said securities shall be placed in the hands of a corporation having trust powers approved by the Banking Commissioner of Texas as Trustee under a trust agreement, the terms of which shall be approved in writing by the Banking Commissioner of Texas, or at the option of any such corporation which sells in Texas, bonds, notes, certificates, debentures, or other obligations upon which it receives installment payments, such corporation may upon application to, and approval by, the Banking Commissioner of Texas deposit securities having a reasonable market value equal to the withdrawal or cancellation value of such obligations outstanding with the State Treasurer of Texas in lieu of such deposits with a Trustee as set forth hereinabove, . . ." (Emphasis supplied.)

The underwriter's bond issued by the Sam Houston Underwriters, Inc., is what is known as a "single-payment" type of bond or obligation in that the entire consideration for the sale thereof is payable at the time of its delivery, and therefore is not the type of bond referred to in Sec. 7 upon which the issuer receives a consideration "in installment payments."

Under the provisions of Section 7 above quoted it is mandatory that the collateral securing the Underwriters Bonds "be placed in the hands of a corporation having trust powers approved by the Banking Commissioner of Texas as Trustee under a trust agreement, the terms of which shall be approved in writing by the Banking Commissioner of Texas," and the State Treasurer in

his official capacity would not be eligible to act as Trustee. If the Underwriters Bonds in question were sold upon the installment plan, then at the option of the Sam Houston Underwriters, Inc., the deposit of the collateral securities could be made with the State Treasurer in the manner and form provided by Section 7, but since the Underwriters Bonds in question are not being sold upon the installment plan but upon the "single-payment" plan, it is necessary that a corporation having trust powers approved by the Banking Commissioner as Trustee be appointed. The terms and conditions of the trust indenture submitted, being predicated upon the eligibility of the State Treasurer to act as Trustee, do not warrant the approval thereof by the Banking Commissioner. The answers to questions Nos. (1) and (2) are therefore in the negative.

Your third question is restated as follows:

"Is the proposed bond considered to be in legal form and does it come within the class of instruments or obligations mentioned in Section 7 of Article 1524a, Revised Civil Statutes of Texas? If so, would the provisions of Article 697, Revised Civil Statutes, also apply?"

The pertinent portions of Section 7 of Article 1524a, Vernon's Civil Statutes, are as follows:

"All bonds, notes, certificates, debentures, or other obligations sold in Texas by any corporation affected by a provision of this Act shall be secured by securities of the reasonable market value, equaling at least at all times the face value of such bonds, notes, certificates, debentures or other obligations."

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"All bonds, notes, certificates, debentures, or other obligations, sold or offered for sale in Texas by such corporation shall definitely describe the character of collateral securing the payment of such obligation."

The foregoing provisions of Section 7 are mandatory that all bonds, notes, certificates, debentures, or other obligations sold in Texas by the Sam

Houston Underwriters, Inc., shall be secured by securities of the reasonable market value equaling at least at all times the face value of such bonds--or other obligations. Under the express provisions of the bond in question, the issuer, Sam Houston Underwriters, Inc., is obligated to pay to the bondholder fifteen years from the date of the bond the sum of \$1,000.00 or more, which shall consist of (A) \$750.00 in cash; (B) 25 fully paid non-assessable shares of the capital stock of Sam Houston Underwriters, Inc., valued for the purpose of the bond at \$250.00; and, (C) such annual bonuses as may accrue to the bondholder under the other provisions of the bond. The company further obligates itself within thirty days from the date of the bond to deliver to the bondholder the 25 shares of stock referred to in (B) above, and further obligates itself at any time after the end of the first year from the date of the bond or at the end of any succeeding year thereafter, to pay to the bondholder the cash surrender value thereof as set forth in the table on page 3 of the bond, both of which obligations are direct obligations of the issuer.

The issuer has a direct obligation to perform all of the conditions imposed upon it under the terms of the Underwriters Bond; and upon its failure to perform any of such obligations, the issuer would be subject to a judgment for the specific performance of such obligations or in lieu thereof; and in the event of its inability to perform its obligation, to deliver the shares of stock in question, it would be liable in damages for the nonperformance of such obligation.

However, that part of the Underwriters Bond (B) which provides for the twenty-five (25) fully paid nonassessable shares of capital stock of the company, herein valued at Two Hundred Fifty Dollars (\$250.00) is not an "other (direct) obligation" within the meaning of Section 7, Article 1524a, which would require its collateralization thereunder. The term "other obligations" as used in Article 1524a means direct monetary obligations of the issuer payable in fixed amounts, such as bonds, notes, certificates and debentures. See Cressy Corp. v. Knz Bros. Co., 177 Wis. 49, 187 N.W. 666 (1922).

It is therefore the opinion of this office that the bond in question is such a bond or other obligation of the Sam Houston Underwriters, Inc., which is required to be collateralized under the provisions of Section 7, Article 1524a, V.C.S.; and the failure to collateralize these bonds by the issuer before offering them for sale or selling them would subject the company to the penalty

prescribed in the last paragraph of Section 7, which would be the forfeiture of its charter and a receivership at the suit of the Attorney General brought at the request of the Banking Commissioner of the State of Texas.

The Underwriters Bond contains the following provision at the bottom of page 1:

"An amount equal to or in excess of the Guaranteed Cash Surrender Value of this Bond shall be invested in United States Government Bonds, First Mortgage Loans on real estate situated in the State of Texas and/or other securities which are qualified investment for the Capital Stock, Surplus and Reserve funds of an Old Line Legal Reserve Life Insurance Company and the said securities shall be deposited in Trust with the Treasurer of the State of Texas as required by the Banking Commissioner of the State of Texas for the benefit of the Bondholders. The securities herein referred to shall at all times have a reasonable market value equal to the guaranteed cash value of this and all other Bonds of this class outstanding."

thus complying with the provision of Section 7 last above quoted requiring a definite description of the character of collateral securing the payment of such obligation.

The proposed underwriter's bond is in legal form and comes within the class of instruments or obligations mentioned in Section 7 of Article 1524a, R.C.S. of Texas, and should be collateralized in accordance with the provisions of Section 7 for collateralization of a "single-payment" bond or other obligation. Since the Underwriters Bond is sold upon the "single-payment" plan and not upon the "partial-payment or installment plan," the provisions of Article 696, Title 21, Revised Civil Statutes, are not applicable.

Since it is the opinion of this office that the Underwriters Bond referred to is the type of obligation requiring collateralization as a "single-payment" bond or obligation, you request our opinion as to the amount for which said bond is to be collateralized.

While the face of the bond primarily calls for the payment to the bondholder by the issuer of the sum of \$1,000.00 or more at the expiration of 15 years from date thereof, nevertheless, upon the delivery to the bondholder of the 25 shares of the capital stock of the company at the agreed valuation of \$250.00, that part of the obligation of the issuer has been discharged, which leaves the obligation of the issuer in full force and effect to pay at maturity date the sum of \$750.00 in cash, the "Guaranteed Maturity Value," plus any bonuses received under clause (C), which are of no fixed amount and may possibly be of no amount at all. The terms of the bond also call for the payment to the bondholder of certain sums listed under the guaranteed cash surrender value on page 3 of the bond upon certain eventualities.

The provisions of Section 7 which govern "single-payment" bonds require that such bonds be secured by securities of the reasonable market value equal at least at all times the face value of such bond. The collateralization of bonds sold upon the installment plan requires that such obligations shall be secured at all times by securities having the reasonable market value equal to the withdrawal or cancellation value of such obligations outstanding. The words "withdrawal value" and "surrender value" are synonymous and are applicable only to the collateralization of bonds sold upon the installment plan and not to the collateralization of bonds sold upon the "single-payment" plan.

Hence the "face value" of the Underwriters Bond which must be secured at all times by securities of the reasonable market value thereof is \$750.00; and the Banking Commissioner of Texas should require that each underwriter's bond be collateralized by the deposit with the Trustee of such securities as may be approved by him which have a reasonable market value equivalent to that amount.

Opinion No. V-483, approved January 24, 1948, is overruled.

#### SUMMARY

The State Treasurer of Texas is not eligible to act as Trustee for a corporation issuing bonds or other obligations under the provisions of Art. 1524a, V.C.S., which are

net sold upon the partial-payment or installment plan.

The specimen bond submitted is a bond or other obligation of the issuer required to be collateralized under the provisions of Sec. 7, Art. 1584a, V.C.S., under a trust agreement or indenture entered into between the issuing corporation and a corporation having trust powers approved by the Banking Commissioner of Texas as Trustee under a trust agreement, the terms of which shall be approved in writing by the Banking Commissioner of Texas. Each bond so sold or offered for sale must be secured under such trust agreement or indenture by the deposit of securities of the reasonable market value equaling at least at all times the face value of such bond--in this case the sum of \$750.00--which securities must be approved by the Banking Commissioner of Texas. Opinion No. V-485 is overruled.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By



C. K. Richards  
Assistant

CHR:wb

APPROVED:



FIRST ASSISTANT  
ATTORNEY GENERAL